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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,086	03/03/2004	Challen W. Waychoff II	29917/04000	4895

7590 08/25/2006

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EXAMINER

MCCORKLE, MELISSA A

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/792,086	Applicant(s) WAYCHOFF, CHALLEN W.	
	Examiner Melissa A. McCorkle	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-8 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No: _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (6,761,702) in view of Shu (6,918,517). Smith discloses applicant's basic inventive concept of a colonic hydrotherapy device substantially as claimed with the exception of a nozzle further comprising a plurality of water outlets. Shu shows the feature to be old in the hydrotherapy devices art. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Shu to modify the hydrotherapy device of Smith by replacing the nozzle with the nozzle further comprising a plurality of water outlets (see Shu abstract) for the purpose of more thoroughly cleansing the perianal region (Since the device of Smith already creates high pressure the adaptation is the plurality of outlets, not the complete nozzle, to create a

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high-pressure fluid vortex. The plurality of outlets will let water spray in all directions to more thoroughly clean the area.)

Smith discloses a colon hydrotherapy device comprising a housing (10), wherein said housing further comprises a first internal chamber (A) formed within said housing and integrally therewith and extending partially through the length of said housing (fig 2) and a second internal chamber (B) formed within said housing and integrally therewith and extending substantially through the entire length of said housing, wherein said second chamber is separate and distinct from said first chamber (fig 2), and wherein said first chamber is adapted to receive fluid inflow and said second chamber is adapted to receive fluid outflow, and a nozzle attached to one end of said housing, wherein said nozzle is in fluid communication with said first chamber, an anterior portion (16), a tapered posterior portion connected to anterior portion (32), a stem on exterior of said housing (28), and a nozzle (claim 5) attached to said housing (fig 2 part 38) comprising a primary water inlet (26), and source of pressurized water (col 4 lines 1-5), a water input line attached to said stem (fig 2) and a drainage line attached to said housing (32.)

4. Claims 2, 4 and 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Shu as applied to claims 1, 3 and 5-7 above, and further in view of Ouelette (4,842,580). Smith and Shu disclose applicant's basic inventive concept of a colonic hydrotherapy device substantially as claimed with the exception of a removable insertion rod residing in said housing. Ouelette shows this feature to be old in the hydrotherapy devices art. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Ouelette to modify the device of

Smith and Shu by adding an insertion rod (28) that resides in said housing (fig 1) to facilitate insertion of the speculum (col 2 line 58).

5. Hawks discloses the insertion rod further comprising a rounded tip at one end (36 and col 3 lines 57-60), a groove in said rounded tip corresponding to said primary water inlet (14), a planar grasping member (36) at the end of said insertion rod opposite said tip (34), further comprising at least one stabilizing notch (40) formed therein.

Response to Arguments

6. Applicant's arguments filed 03/29/2006 have been fully considered but they are not persuasive. Applicant first asserts that the chambers of the Smith and Shu patent do not teach two separate chambers formed with the housing and integrally with the housing. The chambers are separate as stated above and are clear in the Smith patent, as are also clearly integral with one another. Furthermore, the amendments of "formed with" have made the claims product-by-process, and the claims are not limited to the manipulations of the recited steps, only the structure implied by the steps. The patentability of a product does not depend on its method of production.

7. Regarding the combination of the nozzle with the plurality of outlets, the rejection was made more clear as stated above. (Since the device of Smith already creates high pressure the adaptation is the plurality of outlets, not the complete nozzle, to create a high-pressure fluid vortex. The plurality of outlets will let water spray in all directions to more thoroughly clean the area.)

8. The limitations of the grasping member and stabilizing notch are also provided above, as were they in the previous office action.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa A. McCorkle whose telephone number is (571) 272-2773. The examiner can normally be reached on Monday - Friday, 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melissa A McCorkle
Examiner
Art Unit 3763



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